

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                           |   |  |   |
|--|--|---------------------------|---|--|---|
| Investigator:<br>Nina Mickens                    | Team:<br>Team # 2                            | CCRB Case #:<br>200919767 | <input checked="" type="checkbox"/> Force<br><input type="checkbox"/> Abuse | <input checked="" type="checkbox"/> Discourt.<br><input type="checkbox"/> O.L. | <input type="checkbox"/> U.S.<br><input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Sunday, 12/27/2009 1:06 AM   | Location of Incident:<br>72-05 Austin Street |                           | Precinct:<br>112  | 18 Mo. SOL<br>6/27/2011  | EO SOL<br>6/27/2011   |
| Date/Time CV Reported<br>Sun, 12/27/2009 1:06 AM | CV Reported At:<br>IAB                       | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Thu, 12/31/2009 10:17 AM                      |  |   |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |

[illegible]

| Subject Officer(s)      | Shield | TaxID  | Command |
|-------------------------|--------|--------|---------|
| 1. Officers             |        |        |         |
| 2. SGT Joseph Matzinger | 04091  | 927158 | 112 PCT |
| 3. POF Michelle Feldman | 13118  | 938231 | 112 PCT |

| <b>Witness Officer(s)</b> | <b>Shield No</b> | <b>Tax No</b> | <b>Cmd Name</b> |
|---------------------------|------------------|---------------|-----------------|
| 1. POM Kieran Tracy       | 17561            | 943888        | 112 PCT         |
| 2. POM Paul Durecko       | 01257            | 938413        | 112 PCT         |
| 3. POM Michael Carswell   | 30335            | 932426        | 112 PCT         |

| Officer(s)              | Allegation   | Investigator Recommendation |
|-------------------------|--|-----------------------------|
| A. Officers             | Force: Officers struck § 87(2)(b) with a nightstick.                           |                             |
| B. POF Michelle Feldman | Force: PO Michelle Feldman used physical force against § 87(2)(b)              |                             |
| C. SGT Joseph Matzinger | Force: Sgt. Joseph Matzinger struck § 87(2)(b) with an asp.                    |                             |
| D. Officers             | Force: Officers used physical force against § 87(2)(b)                         |                             |
| E. SGT Joseph Matzinger | Discourtesy: Sgt. Joseph Matzinger spoke obscenely and/or rudely to § 87(2)(b) |                             |

## Case Summary

§ 87(2)(b) contacted the Internal Affairs Bureau via telephone on December 27, 2009, to complain about an incident he was witnessing at the time. IAB Log # 09-65364 was generated and received at the CCRB on December 31, 2009 (Encl. 7a-c).

On December 27, 2009, at approximately 1:06 a.m., § 87(2)(b) stated that there was a physical altercation between two males, one of which was § 87(2)(b) outside of Five Burro Café located at 72-05 Austin Street in Queens. Officers responded to the location and § 87(2)(b) was arrested. The following allegations resulted:

- **Allegation A - Force: Officers struck § 87(2)(b) with a nightstick.**

§ 87(2)(g)

- **Allegation B – Force: PO Michelle Feldman used physical force against § 87(2)(b)**

§ 87(2)(g)

- **Allegation C – Force: Sgt. Joseph Matzinger struck § 87(2)(b) with an asp.**

§ 87(2)(g)

- **Allegation D – Force: Officers used physical force against § 87(2)(b)**

§ 87(2)(g)

- **Allegation E - Sgt. Joseph Matzinger spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(g)

## Results of Investigation

### Civilian Statement(s)

#### **Complainant:** § 87(2)(b)

- § 87(2)(b) -old white male, 6'0" tall, 195 pounds with auburn hair and brown eyes. § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on February 1, 2010 (Encl. 9a-p). On December 27, 2009, at approximately 1:06 a.m., § 87(2)(b) and his friend § 87(2)(b) got off work together and went to Five Burro Café located at 7205 Austin Street in Forest Hills. § 87(2)(b), § 87(2)(b)'s friend, asked him to stop by The Tap House next door because they were having a party. After 1 to 1 ½ hours and after consuming two frozen margaritas with alcohol, § 87(2)(b) and § 87(2)(b) went to the Tap House. § 87(2)(b) was "buzzed" but he was not drunk.

§ 87(2)(b) and § 87(2)(b) were among § 87(2)(b)'s friends present at the time. § 87(2)(b) provided their telephone numbers but did not have their last names. § 87(2)(b) tried to say hello to a woman inside the bar but her boyfriend did not like it. § 87(2)(b) was punched once in the right eye and cheek area by a male in the bar. § 87(2)(b)

§ 87(2)(b) and the male grabbed each other. The males' friend jumped on top of § 87(2)(b) and struck him in the back of the head and back.

§ 87(2)(b) § 87(2)(b) was breaking up the fight and pulling people outside. An unidentified male confronted § 87(2)(b) and tried to punch him so they started fighting. Immediately, § 87(2)(b) was grabbed from behind by the back of the head and neck by a short white bald male identified via the investigation as PO Michael Carswell. § 87(2)(b) did not know that a police officer was on him and instead believed he was being jumped by the three men that approached him. It was not until he watched video footage from his friend § 87(2)(b) cell phone that he was able to observe that a uniformed police officer and § 87(2)(b) were grabbing him from behind.

§ 87(2)(b) grabbed the front of § 87(2)(b)'s neck and then put his arm around § 87(2)(b)'s entire neck. PO Carswell hit the right side of § 87(2)(b)'s face against a parking meter once. This was the same area where he was punched in the face earlier. § 87(2)(b) tried to move around because he did not know what was going on. § 87(2)(b) bent forward to try to get his arms free. When § 87(2)(b) and PO Carswell tried to pull § 87(2)(b)'s arms behind his back, this was the first time § 87(2)(b) realized that a police officer was interacting with him. § 87(2)(b) told PO Carswell to "chill out". § 87(2)(b) started choking § 87(2)(b) more and twisted his arm more to the point where it felt like it might break. § 87(2)(b) continued to move to try to prevent his arm from being broken.

Five to six male police officers came and slammed § 87(2)(b)'s upper body and face against a parked car. § 87(2)(b) could not identify or provide a physical description for the officers on him at this time. The officers were dressed in uniform. The officers tried to get § 87(2)(b) to the ground but he would not let them. He continued to move around and lifted his body off of the car. The officers ripped off § 87(2)(b)'s hooded shirt in the process, leaving § 87(2)(b) shirtless. After lifting himself up from the parked car, § 87(2)(b) walked a few feet to the front of the Tap House. Two to three officers grabbed on him and tried to pull him down. § 87(2)(b) somehow was pressed against the car again and asked the officers what was wrong with them. He was struck once on the right side of the head with a nightstick. § 87(2)(b)'s vision was blurry at this point and he fell to the floor. He did not know who struck him because his back was turned. As a result, § 87(2)(b) had an imprint of a pole on the side of his face. The officers were now able to get § 87(2)(b) faced down on the ground. An officer placed his knee on § 87(2)(b) to hold him down. § 87(2)(b) still moved around. The officers did not give § 87(2)(b) any instructions. § 87(2)(b) alleged that while on the ground, a female police officer identified via the investigation as PO Michelle Feldman, kicked him in the middle of the face and on the right side of his ribs. § 87(2)(b) covered his face somewhat when the officers tried to kick him. § 87(2)(b) could feel two nightsticks striking him on the back and legs and officers kicking him. One of the officers striking § 87(2)(b) on the legs was a white male, 5'9" -5'10" tall and wearing eye glasses. This officer has been identified via the investigation as Sgt. Joseph Matzinger. He sat on § 87(2)(b) as he struck him with the nightstick.

When the officers stopped hitting § 87(2)(b) they tried to place him in a marked police car. § 87(2)(b) was handcuffed at the time. § 87(2)(b) did not want to go in the car because he was afraid that the officers would beat him more. § 87(2)(b)'s leg was still outside of the car as he was being pushed inside. A male officer slammed the door against § 87(2)(b)'s right ankle four to five times. § 87(2)(b)'s ankle and shin were injured as a result. § 87(2)(b) could not describe the officer that slammed the door against his foot. § 87(2)(b) pulled his foot in the car finally. When the door closed, § 87(2)(b) kicked it causing the window to break and shatter. The officers became angrier. Sgt. Matzinger said "You motherfucker" and commented that he could not believe § 87(2)(b) broke the window. PO4, a

Hispanic or Italian male with dark hair and another unidentified officer used an asp to strike § 87(2)(b) through the broken car window. Sgt. Matzinger opened the door and tried to pull § 87(2)(b) out. § 87(2)(b) continued to resist and would not come out. Sgt. Matzinger pulled § 87(2)(b) by the legs causing his shoes, pants and underwear to come off. § 87(2)(b) held onto the seat naked. The officers slid him out of the car by the legs and he fell on his buttocks. The shattered glass was on the ground under § 87(2)(b) and he struggled to get back in the car. The officers removed § 87(2)(b)'s handcuffs and tried to restrain him further. The same group of officers struck him with the nightsticks again while he was naked. An officer got on top of § 87(2)(b) and kneeled on his arms. Other officers kicked him and some punched him. § 87(2)(b) was placed in handcuffs again and then in a dark colored restraint bag. § 87(2)(b)'s arms were behind his back in the bag. His feet were the only body part exposed. § 87(2)(b) was cold and sick. He threw up and the officers would not touch him. § 87(2)(b) was in the bag for 45 minutes before the ambulance arrived.

In the ambulance, three or four officers were inside. After being sedated, § 87(2)(b) woke up, at approximately § 87(2)(b). § 87(2)(b) was brought back to the 112<sup>th</sup> Precinct and then to the court house. Afterwards he went back to the 112<sup>th</sup> Precinct. § 87(2)(b) described his injuries as dizziness, ankle pain, gashes on the buttocks, bruising on arms and neck, scratches on the neck, swelling on legs, bruises and nerve damage on the wrists, tooth damage and shoulder pain. He provided photographs of the injuries (Encl. 9d-n)

**Witness:** § 87(2)(b)

- *Refused to provide full name and pedigree information.*

§ 87(2)(b) an acquaintance of § 87(2)(b) was contacted via telephone on March 15, 2010 (Encl. 13). On December 27, 2009, § 87(2)(b) was intoxicated inside of the Tap House. § 87(2)(b) came outside and saw § 87(2)(b) being handled by a bouncer and two police officers. PO1, a dark haired, white male, stocky build 5-8"-5'9" tall and PO2, a white male, brown hair average build, 5'10-6'0" tall, oval shaped face, 30-35 years and the only officer wearing glasses. The officers and the bouncer were standing up and on top of § 87(2)(b) trying to get him on the floor. The officers were pushing § 87(2)(b) against a civilian's car. § 87(2)(b) was moving his body and swaying back and forth. PO1 held § 87(2)(b) by the hand and PO2 was pushing him by the car. PO2 came behind § 87(2)(b) and placed his right arm around his neck. PO2 used his left arm to secure the right one. § 87(2)(b) was able to breathe but not very well.

The people outside were telling § 87(2)(b) to calm down. He moved more to try to get out of the chokehold. The officers pushed him to the ground. § 87(2)(b) was struggling trying to move his arms and legs. § 87(2)(b) did not see the officers with any items in their hands or trying to strike him with anything. § 87(2)(b) wrestled with the officers but did not try to strike them. § 87(2)(b) went inside the Tap House to get her jacket. When she came outside, § 87(2)(b) was alone and in the rear passenger's side of a police car. The driver's side of the car was facing the Tap House. The officers were telling § 87(2)(b) to calm down. § 87(2)(b) said he did not know what was going on.

§ 87(2)(b) heard the glass of the car window break. She went to the passenger's side of the car to see. She observed a male officer with a black stick in his hand. One officer came close and got § 87(2)(b) upset. The officers took § 87(2)(b) out of the car some way but § 87(2)(b) did not see how. She saw the officer swinging the stick at § 87(2)(b) but could not recall if it was when he was inside the car or out of the car and on the ground. § 87(2)(b) was rambling that this was not right. When § 87(2)(b) was on the floor, § 87(2)(b) was not sure what he was doing.

Three officers took off § 87(2)(b)'s clothing. § 87(2)(b) did not know who these officers were. Two additional officers were watching the other officers to make sure that nothing happened. § 87(2)(b) only had his boxers on and was not completely naked. They kept him in his boxers for three minutes. The officers put § 87(2)(b) in a body bag and took him away in an ambulance.

**Witness:** § 87(2)(b)

§ 87(2)(b) was contacted via telephone on March 15, 2010 (Encl. 14). § 87(2)(b) and a friend drank a pitcher of margarita and seemed normal when they left. After 30 minutes, § 87(2)(b) came outside. Several people were outside at the time and § 87(2)(b) was in the back of a police car, crying and asking what he did wrong. This was the first time that § 87(2)(b) saw § 87(2)(b) after serving him at the restaurant. Suddenly, § 87(2)(b) heard a crashing noise. The window of the passenger's side of the police car was broken. Officers pulled § 87(2)(b) out through the open window and onto the floor where the shattered glass lay. § 87(2)(b) was in handcuffs. Three to four male officers pulled off all of § 87(2)(b)'s clothing leaving him completely naked in the street. The officers did not strike § 87(2)(b) with any objects and did not hit him. EMS personnel wrapped § 87(2)(b) in a body bag and took him in an ambulance.

**Witness:** § 87(2)(b)

§ 87(2)(b) provided a statement on March 23, 2010 (Encl. 15). On December 27, 2009, § 87(2)(b) punched the kid that kept enticing him to fight just as the officers arrived. A white male officer grabbed § 87(2)(b) and threw him against a wall. § 87(2)(b) would not let the officer handcuff him. Additional officers were on § 87(2)(b) and tried to wrestle him onto a car and then onto the floor. However, § 87(2)(b) was not going down and still resisted. The officers started hitting § 87(2)(b) with clubs while he was on the ground. PO2 looked like the guy from the television show "The Office", wore glasses, with dark brown hair. He hit § 87(2)(b) with a stick 10 times, in his legs, arms and body. A female officer was at the scene but she was not doing anything. Somehow, § 87(2)(b)'s clothing from the waist down was ripped off. He only wore a shirt. The officers handcuffed § 87(2)(b) and put him in the car. § 87(2)(b) kept his legs out when the officers seated him inside. PO2 used his club to hit § 87(2)(b) five times in the leg and then closed the door. The officer did not strike § 87(2)(b) in the leg with the door. § 87(2)(b) broke the window with his foot. The officers pulled him out of the car and onto the floor. They called an ambulance and when it arrived, they wrapped § 87(2)(b) up and took him away.

#### **Attempts to Contact Complainant/ Witnesses**

Five attempts were made to contact § 87(2)(b) via telephone between January 22, 2010 and February 25, 2010. On a few occasions § 87(2)(b) was at work and could not talk. On January 28, 2010, § 87(2)(b) made an appointment to appear for an interview on February 3, 2010. On the date of the interview, § 87(2)(b) called to cancel because he had to work. Two final attempts were made to contact § 87(2)(b) on February 18, 2010 and February 25, 2010. Voicemail messages were left each time. Letters mailed to § 87(2)(b)'s home were not returned. As of the date of this report, § 87(2)(b) has not contacted the CCRB.

§ 87(2)(b) provided the name of several witnesses. However, attempts were not made to contact every person. § 87(2)(g)

Attempts were made to obtain video footage and contact information for § 87(2)(b) the bouncer who is employed by the Tap House via their attorney, § 87(2)(b). Two letters were mailed to § 87(2)(b) office on March 11, 2010 and March 31, 2010. The letters were not returned. On February 16, 2010, § 87(2)(b) was contacted via telephone. He requested that a subpoena be mailed to his office for the video footage and contact information for § 87(2)(b). The subpoena was sent the same day. Between February 25, 2010 and March 31, 2010, attempts were made to contact § 87(2)(b) via telephone. Each time a message was left with Sue, the receptionist. As of the date of this report, § 87(2)(b) has not contacted the CCRB and has not provided any of the documentation that was requested.

### **NYPD Statement(s):**

#### **Witness Officer: PO MICHAEL CARSWELL**

- § 87(2)(b) -old white male, 5'8" tall, 165 pounds slightly receding hair and brown eyes.
- Tour of 11:15 p.m., to 7:50 a.m. the following day, dressed in uniform, assigned to sector C with PO Kieran Tracy in a marked patrol car.

**Memo Book:** 12:50 a.m, pick up large group for a dispute at 72-07 Austin Street. 12:58 a.m., went to § 87(2)(b). (PO Carswell explained that it was much later when he went to the hospital and not 12:58 a.m., as noted in his memo book.)

### **CCRB Testimony**

PO Carswell was interviewed at the CCRB on April 29, 2010 (Encl. 17a-b). On December 27, 2009, at approximately 12:50 a.m., PO Carswell was driving down Austin Street in Queens when he saw § 87(2)(b) punch a black male in the face in front of Tap House and Five Burro Café. There was a large group of people outside. PO Carswell stopped his patrol car, got out and went to take § 87(2)(b) out of the crowd. He placed his hands on § 87(2)(b)'s shoulder, forcing him to turn around. He instructed § 87(2)(b) to walk with him but he refused. PO Carswell started pulling him and tried to place § 87(2)(b) in handcuffs but he would not allow it. At the time PO Tracy was talking to the black male that § 87(2)(b) punched in the face.

A large black male working as security or the bouncer at one of the bars was outside. He tried to assist PO Carswell with holding down § 87(2)(b). PO Tracy radioed for additional units. § 87(2)(b) did not appear to be injured when PO Carswell initially interacted with him. He was acting irrationally which made PO Carswell think that he was under the influence of a drug. PO Carswell also smelled alcohol on § 87(2)(b)'s breath. PO Carswell had § 87(2)(b)'s body pressed against a square parking meter on the sidewalk. He did not know how he was able get § 87(2)(b) onto the meter and did not forcefully push § 87(2)(b)'s head into the meter. § 87(2)(b) and PO Carswell started struggling. They fell to the ground numerous times as he attempted to handcuff § 87(2)(b) who was resisting by moving his arms. PO Carswell may have punched § 87(2)(b) to prevent him from moving but he did not kick him and did not see any other officers punch or kick him.

PO Paul Durecko and PO Stavros Spanos came to assist. The officers tried to place § 87(2)(b) in handcuffs. The officers placed § 87(2)(b) against a marked patrol car. PO Carswell rolled out of the struggle and walked away because he had trouble breathing. He called

for an ambulance and tried to keep the crowd away from the officers. He no longer assisted with § 87(2)(b)'s arrest. PO Michelle Feldman and Sgt. Matzinger came to the scene. PO Carswell did not know what role if any Sgt. Matzinger had in the incident. He did not see any officer remove their batons and or asps and used them against § 87(2)(b). PO Carswell did not hear any officers refer to § 87(2)(b) as a "motherfucker" or use profanity toward him. The crowd yelled and said they were calling IAB. PO Carswell tried to keep them on the sidewalk.

An ambulance came and PO Carswell went to the hospital. He had a knee injury from falling onto the ground and a bruise on his right shoulder. PO Durecko was also injured. However, PO Carswell did not know the extent of the injuries. PO Carswell was aware that ESU was called but he did not know whether he was later told that or was on the scene when they were called. An ambulance did not come for § 87(2)(b) when PO Carswell was leaving and he did not see § 87(2)(b) being placed in a patrol car. PO Carswell later learned that § 87(2)(b) kicked out the window of the patrol car but he was not present when this occurred.

Video footage was shown to PO Carswell. He identified himself as the officer interacting with § 87(2)(b) near a parking meter. PO Carswell identified PO Spanos and PO Durecko who came to assist, grabbing § 87(2)(b) and placing him on a nearby parked car. Footage of § 87(2)(b) inside of a patrol car was shown. PO Carswell had no recollection of being on the scene when § 87(2)(b) was inside of the patrol car or when ESU came.

**Subject Officer: Sgt. Joseph Matzinger**

- § 87(2)(b) -old white male, 6'2" tall and 200 pounds with brown hair, green eyes and eyeglasses.
- Tour of 8:55 p.m. to 6:52 a.m., the following day. He was assigned to be the patrol Supervisor and worked with PO Michelle Feldman. Both officers were dressed in uniform and assigned to an unmarked patrol car #269.

**Memo Book:** Sgt. Matzinger did not have any memo book entries regarding the incident.

**CCRB Testimony**

On May 6, 2010, Sgt. Joseph Matzinger was interviewed at the CCRB (Encl. 26a-b). § 87(2)(g)

§ 87(2)(g) When Sgt. Matzinger and PO Feldman arrived there were officers in the street and on the ground trying to place § 87(2)(b) in handcuffs. Sgt. Matzinger heard officers yelling for help and saw that they were on the ground and § 87(2)(b) was on top of them. The officers were telling § 87(2)(b) to stop resisting. Sgt. Matzinger took out his asp and struck § 87(2)(b) twice in his lower leg. § 87(2)(b) was not affected and continued to move. Sgt. Matzinger did not see any other officers with their asps out or using them. Sgt. Matzinger went to the ground, tried to get § 87(2)(b)'s other hand out and place him in handcuffs. After five minutes, the officers were able to rear cuff § 87(2)(b) and place him in the back of a patrol car. Sgt. Matzinger did not see any officers punch or kick § 87(2)(b).

Sgt. Matzinger did not know who walked § 87(2)(b) to the patrol car or who placed him inside. § 87(2)(b) continued to resist violently and did not want to get inside. The officers had to push him inside of the car. Sgt. Matzinger did not see § 87(2)(b)'s legs hanging outside of the car at anytime. He and the other officers did not use the police car door to strike § 87(2)(b) on his legs. § 87(2)(b) managed to get the handcuffs in front of him, took off his clothes, kicked out the back window of patrol car and tried to climb out of the window head first. § 87(2)(b) was almost completely out of the window when Sgt. Matzinger determined it was unsafe to be climbing out of the car in that matter. Officers pulled the rest of § 87(2)(b).

body out so he would not fall to the ground. The officers laid him flat down on the ground for his safety and did not sit him upright. The officers held § 87(2)(b) down with their hands and placed their knees on his legs so he would not move. § 87(2)(b) continued to struggle and kick. The officers did not punch or kick § 87(2)(b) as he lay on the ground. Sgt. Matzinger did not remember if he had any physical interaction with § 87(2)(b) once he was removed from the patrol car.

Sgt. Matzinger did not call § 87(2)(b) a “motherfucker” for breaking the window and did not hear another officer make that comment. § 87(2)(b) was still handcuffed and was not struck with an asp at anytime after he came out of the window. ESU was requested. After 5-10 minutes, they arrived, bagged § 87(2)(b) and took him to the hospital.

**Subject Officer: PO MICHELLE FELDMAN**

- § 87(2)(b) -old white female, 5’5” tall and 125 pounds with brown hair and brown eyes.
- Tour of 8:00p.m. to 5:35a.m. the following day and overtime until 7:50a.m. She was dressed in uniform and assigned as Sgt. Joseph Matzinger’s operator in a marked patrol car.

**Memo Book:** 12:55 a.m., back sector for 85 at 72 Road and Austin Street. 1:15 a.m. One under by sector A and then back to the stationhouse. § 87(2)(b) with Sgt. Matzinger to check on the perpetrator. 2:30 a.m., 62A at the stationhouse.

**CCRB Testimony**

PO Michelle Feldman was interviewed at the CCRB on June 10, 2010 (Encl. 28a-b). § 87(2)(g)

PO Feldman added that she was the only female officer on the scene and her physical interaction with § 87(2)(b) was limited to grabbing his hands. PO Feldman did not kick or punch § 87(2)(b) and did not see any other officers do so. An officer removed an asp. However, PO Feldman could not recall which officer this was and did not see § 87(2)(b) get struck with it.

PO Feldman was standing by the car window at the time when § 87(2)(b) kicked the window out of the patrol car and tried to get out. The officers tried to prevent § 87(2)(b) from getting out of the car by grabbing him and sitting him back inside of the car. In that time frame, PO Feldman was not sure how § 87(2)(b) got out of the patrol car. PO Feldman did not remember any officers placing their asp into the broken patrol car window and attempting to strike § 87(2)(b) with it. Glass shattered all over PO Feldman so she walked away to clean it off and get water. § 87(2)(b)’s pants were falling off at one point. However, PO Feldman did not recall ever seeing § 87(2)(b) naked from the waist down. After going to the precinct to fill out paperwork, PO Feldman and Sgt. Matzinger went the hospital to check on § 87(2)(b). PO Feldman noticed for the first time a scrape or scratch on § 87(2)(b)’s face but she did not see any other injuries.

**Witness Officer: PO KIERAN TRACY**

- § 87(2)(b) -old white male, 6’0” tall, 206 pounds, brown hair and blue eyes
- worked a tour of 11:15 p.m., to 7:50a.m with overtime to 2:20 p.m. the following day. He was dressed in uniform, assigned to sector C and assigned to marked patrol car #4191 in which PO Michael Carswell operated.

**Memo Book:** 12:50 a.m. pick up of a large dispute at 72-07 Austin Street. 12:58 a.m., one under for assault and resisting arrest. 1:30 a.m., returned to precinct. 2:30 a.m., Queens North



duty captain arrived. § 87(2)(b) to transport § 87(2)(b) and PO Hutter to Queens Central Booking. § 87(2)(b) medically cleared and transported to central booking. § 87(2)(b) 8:25 a.m. PO Moran from day tour relieved PO Tracy at the hospital. He finished arrest processing and ended his tour at 2:20 p.m.

### **CCRB Testimony**

PO Kieran Tracy was interviewed at the CCRB on May 6, 2010 (Encl. 24a-c). § 87(2)(g) PO Tracy added that PO Durecko, PO Feldman and Sgt. Matzinger arrived while PO Carswell and PO Tracy were in the street. Once he was placed in handcuffed, § 87(2)(b) continued to kick and move around as the officers tried to place him in the rear of PO Tracy's patrol car. PO Tracy went to the opposite side of the car to remove the black male that was originally seated in the car and then took the male to another patrol car. § 87(2)(b) did not want to get into the patrol car and was half in and half out. By the time that PO Tracy returned to his patrol car, § 87(2)(b) was completely inside. After § 87(2)(b) was handcuffed, there was no additional physical force used against him.

PO Tracy could not recall where he was at the time when § 87(2)(b) kicked out the rear car window. He did not see anyone place an asp through the car window and was not sure if § 87(2)(b) completely climbed out of the window on his own or if the officers pulled him out. § 87(2)(b)'s lower legs were cut from the broken glass. They held § 87(2)(b) down with their knees and arms so he would no longer move. § 87(2)(b) was not kicked or punched by any officers including PO Feldman after he climbed out of the window.

### **Witness Officer: PAUL DURECKO**

- § 87(2)(b) -old white male, 5'5" tall, 140 pounds with brown hair and green eyes.
- Tour of 11:15p.m. to 7:50 a.m. the following day. He was dressed in uniformed, assigned to patrol sector A/B in a marked patrol car in which PO Spanos was operated.

**Memo Book:** 12:50 a.m., 52 and 85 at 72-07 Austin Street. § 87(2)(b)

### **CCRB Testimony**

On May 3, 2010, PO Paul Durecko was interviewed at the CCRB (Encl. 20a-b). § 87(2)(g) PO Durecko added that when he first arrived, § 87(2)(b) was swinging and punching and at one point picked up PO Carswell and threw him against a meter machine. They were moving around a lot and were not in control of § 87(2)(b) PO Durecko did not remember whether an officer used an asp or baton but it took six officers to rear handcuffed § 87(2)(b) with two sets of handcuffs. PO Feldman helped the officers and PO Durecko did not see her kick § 87(2)(b) The officers tried to place him inside the rear of PO Carswell's patrol car. § 87(2)(b) kept kicking the door as the officers tried to close it. PO Durecko explained that it is possible that the officers struck § 87(2)(b)'s leg with the door as they tried to close it. However, it was not intentional. § 87(2)(b) was crying asking why the officers were doing this to him and said he was a good kid. He called the officers "faggots" and referred to them as "hick cops".

PO Durecko and Sgt. Matzinger guarded the rear passenger side of the vehicle as § 87(2)(b) was inside. At no point did the officers remove § 87(2)(b)'s clothes or pull him out of the window. An officer did not place an asp through the window to strike § 87(2)(b) § 87(2)(b)

§ 87(2)(b) was bleeding from the legs because he kicked out the window. § 87(2)(b) was on his stomach and the officers tried to hold him down until ESU arrived. No additional force was used when § 87(2)(b) was on the ground.

### **Medical Records**

The Ambulance Call report and Pre Hospital call report from December 27, 2009 at 1:06 a.m. indicate that EMS responded to 7207 Austin Street and treated § 87(2)(b) (Encl. 31a-c). He had face pain due to an assault/ fight. A wound dressing was applied. The narrative states that § 87(2)(b) was found in a body wrapped bag and handcuffed by NYPD and ESU. § 87(2)(b) was alert and verbally abusive with a cut on his face. He was bleeding and had swelling on the face. § 87(2)(b) complained the he was punched in the face. The presumptive diagnosis by EMS was that § 87(2)(b) was intoxicated and an EDP.

The FDNY Call report indicated that two officers PO Paul Durecko and PO Michael Carswell were injured and taken to § 87(2)(b) ital (Encl 31d-g).

§ 87(2)(b) was seen at § 87(2)(b) on § 87(2)(b) (Encl. 29a-i). § 87(2)(b) came in a body bag. § 87(2)(b) was uncooperative and verbally abusive. He alleged that he was assaulted on the street. He had swelling and a laceration to the right eye. § 87(2)(b)'s alcohol level was 221.7 which indicated he was severally intoxicated. He had to be given medication to calm down. He has multiple abrasions on the extremities and face. There was no sign of fractures on any part of the body.

§ 87(2)(b) was seen on § 87(2)(b) by § 87(2)(b) (Encl. 30a-b). § 87(2)(b) was diagnosed with a contusion of the ankle, finger, knee, shoulder region and wrist. He was prescribed over the counter medication for pain, limited weight bearing on right ankle and required crutches. There were no fractures.

### **NYPD Document(s)**

#### **Sprint**

Sprint # N00702 was labeled a dispute (Encl. 32a-h) . 104th Precinct sector A, 112th Precinct Sector A and sergeant responded. One person was under arrest. The sprint notes that an injured MOS needed EMS for chest pains. ESU was requested the arrestee was removed to § 87(2)(b)

#### **Complaint Report**

Two were generated for § 87(2)(b) (Encl. 22a-d). § 87(2)(b) the victim, alleged that § 87(2)(b) punched him in the head. After being arrested § 87(2)(b) kicked out the window in the police car of RMP 4191 and attempted to resist arrest. Two MOS were injured.

#### **Arrest Photo**

§ 87(2)(b) has swelling to the lip and right eye and minor laceration on the lower lip (Encl. 12).

#### **ESU Report**

Det. Robert Matzelle and Anthony Mazza from ESU Truck A10 placed § 87(2)(b) in protective restraints (Encl. 35). There is a notation of old injuries to the legs and that Sgt. Matzinger overheard § 87(2)(b) say he was a motorcycle stunt man.

#### **UF-49**

An unusual occurrence report was prepared by Queens North Duty Captain Howard Gottesman (Encl. 36a-c). It notes that § 87(2)(b) managed to get his rear cuffs in front of him

and took off all his clothing except his shirt. He climbed halfway out of the freshly broken window. Sgt. Matzinger decided to have officers on the scene remove § 87(2)(b) from the RMP through the window and secure him on the ground to wait for ESU. He received a cut above the eye from the broken glass or being placed on the ground.

### **Other Evidence**

§ 87(2)(b) provided video footage from December 27, 2009 that his friend § 87(2)(b) took on a cell phone camera. There are four video clips. The first video shows § 87(2)(b) the bouncer holding onto § 87(2)(b) and placing his arm around § 87(2)(b)'s neck. § 87(2)(b) is standing in front of a parking meter at the time and PO Carswell and § 87(2)(b) were trying to restrain him. It is not clear if § 87(2)(b)'s head is slammed against the meter. Four to five additional officers try to force § 87(2)(b)'s body onto a parked car but he moves around. Other footage shows § 87(2)(b) inside of a police car. Two officers are standing near the window of the car. It is not clear whether they have something in their hands or if they place their hands in the car window. The remaining footage shows officers restraining § 87(2)(b) in a body bag. He is then transported into an ambulance with two uniformed officers.

A flash drive was received from § 87(2)(b). However, there was no video footage on it. When § 87(2)(b) was contacted via telephone on March 31, 2010, she stated the footage was on it but is no longer available.

### **Summons/Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming physical injury to several body parts. The monetary amount he is seeking is not noted (Encl. 10a-d).

### **Civilian(s) Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian(s) CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b)

### **Subject Officer(s) CCRB History**

- PO Feldman has been a member of the service for four years and there are no substantiated CCRB allegations against her (Encl. 4).
- Sgt. Matzinger has been a member of the service for nine years and there are four substantiated CCRB allegations against him (Encl. 5). In case # 200715888, Sgt. Matzinger received substantiated allegations for a vehicle stop, search of a person, frisk and vehicle search. Charges were recommended by the board. The NYPD declined to prosecute.

### **Conclusion**

### **Identification of Subject Officer(s)**

Sgt. Matzinger and PO Feldman acknowledged their roles in the incident.

## Investigative Findings and Recommendations

### Allegations Not Pleaded

§ 87(2)(g)  
[REDACTED]

### Allegation A - Force: Officers struck § 87(2)(b) with a nightstick.

§ 87(2)(b) alleged that an officer struck him in the head once with a nightstick and then several officers struck him about his body with nightsticks during the course of his arrest. § 87(2)(b) could not describe any of the officers except Sgt. Matzinger. Although, Sgt. Matzinger is the only officer that admitted to using an asp, he and all of the other officers interviewed denied that anyone else used one. § 87(2)(g)

### Allegation B – Force: PO Michelle Feldman used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Feldman kicked him in the middle of his face and in the right side of his ribs as he was on the floor. PO Feldman denied doing this. The officers interviewed corroborated PO Feldman’s statement. Three witness statements were obtained and each person denied that officers used any force on § 87(2)(b) beyond the use of an asp. § 87(2)(b) a witness § 87(2)(b) provided contact information for, went on to say that he did not see PO Feldman do anything to § 87(2)(b) § 87(2)(g)

### Allegation C – Force: Sgt. Joseph Matzinger struck § 87(2)(b) with an asp.

It is undisputed that Sgt. Matzinger struck § 87(2)(b) with an asp as he resisted arrest. According to Patrol Guide Procedure 203-11, officers may use the minimal amount of force necessary to affect an arrest of a resisting suspect (Encl. 2a-b). § 87(2)(g)

### Allegation D – Force: Officers used physical force against § 87(2)(b)

§ 87(2)(b) alleged that during the course of his arrest different officers kicked and punched him when he was and was not in handcuffs. § 87(2)(b) could not describe these officers and the officers that were interviewed denied using any physical force beyond grabbing § 87(2)(b)'s arms and wrestling to get him on the ground. As stated above, three witness statements were obtained and each person denied that officers used any force on § 87(2)(b) beyond the use of an asp. Although, § 87(2)(b) sustained multiple injuries it is not clear how the injuries occurred. § 87(2)(b) was highly intoxicated and was in a fight just before the officers interacted with him. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E - Sgt. Joseph Matzinger spoke obscenely and/or rudely to § 87(2)(b)**

§ 87(2)(b) alleged that Sgt. Matzinger referred to him as a “mother fucker.” Sgt. Matzinger denied this. The officers interviewed corroborated Sgt. Matzinger’s statement. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team: \_\_\_\_\_

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Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date